

This matter has been before the Appeals Board on several occasions. The original Award, issued September 10, 1997, granted claimant permanent partial disability and post-award medical treatment. That Award is currently on appeal before the Kansas Court of Appeals. In a post-award preliminary Order, Administrative Law Judge Barnes ordered Dr. Klafta to examine claimant for the purpose of deciding the issue of compensability and for recommendations for future treatment. That matter was appealed by the respondent to the Board, but abandoned voluntarily by respondent on December 21, 1998. The Board's Order dismissing that appeal was issued January 15, 1999.

Dr. Klafta examined claimant and issued his recommendations for treatment, including epidural injections and, if necessary, surgery to claimant's low back.

A second form E-3 was filed by claimant on January 27, 1999, with the appropriate notice of preliminary hearing filed March 4, 1999. At the April 15, 1999, preliminary hearing, the medical reports of Dr. Eyster, Dr. Klafta and Dr. Estivo were submitted for consideration. Both Dr. Eyster and Dr. Estivo agreed claimant's condition, while necessitating treatment, was not related to her 1995 injury, but instead was related to the degenerative process ongoing in claimant's low back. Dr. Klafta, in his report of December 2, 1998, opined that claimant's symptoms were similar to what he found while treating her in 1995. He went on to state in his follow-up letter of December 16, 1998, that the recent findings are related to her injury of February 17, 1995.

A review of claimant's medical history finds that surgery was originally recommended in 1995. That surgery was never authorized. Claimant was also recommended for epidural steroid injections early on. The record indicates one or possibly two of these injections were administered, but the results are unclear.

No doctor objected to administering the epidural injections. Neither Dr. Eyster nor Dr. Estivo allege these injections were unnecessary. The only dispute raised by Dr. Eyster and Dr. Estivo is whether the injections were to treat the degenerative process or the original 1995 injury.

It is also noted a dispute has long existed regarding the authorized care and who would be responsible for same. Dr. Klafta was originally authorized in 1995. Respondent then revoked Dr. Klafta's authorization and sent claimant to Dr. Bernard Poole. As the result of a preliminary hearing of February 6, 1996, involving a dispute regarding ongoing medical care, respondent was ordered to provide a list of three doctors from which claimant could choose her authorized physician. The list provided by respondent included Dr. Eyster, Dr. Poole and Dr. Anthony Pollack. Dr. Eyster provided ongoing conservative treatment after that time. At different times during this litigation, claimant has been examined and treated by both Dr. Eyster and Dr. Poole. The record does not indicate whether claimant has ever received treatment from Dr. Pollock.

Claimant currently seeks medical care for her ongoing symptoms from the 1995 injury. The current recommendations for treatment from Dr. Klafta are similar to the recommendations provided in 1995.

The pertinent section of K.S.A. 1998 Supp. 44-510(c)(1) reads as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this subsection (c)(1), either party or both parties may request the director to select a treating health care provider.

The administrative procedure set out in K.S.A. 1998 Supp. 44-510(c)(1) has been utilized in this case by the parties. The original problem, associated with the authorized treating physician, went to preliminary hearing and respondent was granted the opportunity to provide a list of three health care providers. Claimant was given the opportunity choose from that list of three. Currently, it appears that claimant is unable to obtain satisfactory services from the health care providers submitted by the employer. The statute, therefore, grants either of the parties the right to request the director to select a treating health care provider. The Administrative Law Judge, in appointing Dr. Klafta, who was at one time the authorized treating physician, is following the mandate of K.S.A. 1998 Supp. 44-510(c)(1).

K.S.A. 1997 Supp. 44-534a grants the Administrative Law Judge the right to make a preliminary award of medical compensation in accordance with the pertinent facts. It appears from the record claimant is in need of ongoing medical care. The Appeals Board finds that the Administrative Law Judge did not exceed her jurisdiction in awarding post-award medical care. The Appeals Board further finds the Administrative Law Judge did not exceed her jurisdiction in appointing Dr. Klafta as the authorized treating physician.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated April 15, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Gerard C. Scott, Wichita, KS
Daniel L. Doyle, Kansas City, MO
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director